

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, FEBRUARY 6, 2007

The Council of the City of San José convened in regular session at 9:30 a.m. in the City Hall Wing, Conference Room W133, at City Hall.

Present: Council Members - Campos, Constant, Chirco, Cortese, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Liccardo. (Excused)

Vacant: - Council Districts 4 and 6.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel on anticipated litigation pursuant to Government Code Section 54956.9, subsection (c) with respect to initiation of litigation in two (2) matters. (B) to confer with Labor Negotiator pursuant to Government code Section 54957.6, City Negotiator: City Manager Designee Alex Gurza, and the following Employee Organizations: (1) International Association of Firefighters, Local 230; (2) Municipal Employee Federation.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:29 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Constant, Chirco, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Council Districts 4 and 6.

INVOCATION

Dave Sawkins, Senior Pastor, South Valley Christian Church, San José and Orchard Community Church, Campbell. (District 2)

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PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously the Orders of the Day and the Amended Agenda were approved. (9-0.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of February 6, 2007:

A. Authority to Initiate Litigation

Authority to initiate litigation was given in one (1) matter. The names of the actions and the defendants, as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote: Ayes: Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Noes: None.

Disqualified: None.

Absent: None.

Vacant: Districts 4 and 6.

CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing the “Stars” of the Combined Giving Campaign for their outstanding contribution to the program. (City Manager’s Office/General Services) (Deferred from 1/30/07 – Item 1.2)

Action: Mayor Reed and Director of General Services Peter Jensen recognized and commended the “Stars” of the Combined Giving Campaign for their exceptional contributions.

- 1.3 Presentation of a commendation to Joevelyn Orasa for her dedication and passion to promote the teachings and wisdom of Dr. Martin Luther King and to encourage students to creatively find meaning in his words and interpret them for her generation through writing, art and multimedia expression. (Cortese)
(Rules Committee referral 1/24/07)**

Action: Dropped, to be rescheduled per District 8.

- 1.4 Presentation of a commendation recognizing the San José McEnery Convention Center Staff for providing great customer service and event support during the past three Project Homeless Connect events. (Housing)**

Action: Mayor Reed and Director of Housing Leslye Krutko recognized and commended the San José McEnery Convention Center Staff for their outstanding customer service and support.

CONSENT CALENDAR

Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0.)

2.1 Approval of minutes:

(a) Current Minutes

- (1) Regular minutes of December 5, 2006**
- (2) Regular minutes of December 12, 2006**

(b) Past Minutes

- (1) Regular minutes of June 6, 2006**
- (2) San José Parking Authority minutes of June 6, 2006**
- (3) Regular minutes of June 13, 2006**
- (4) Regular minutes of May 2, 2006**
- (5) Regular minutes of May 9, 2006**
- (6) Regular minutes of May 16, 2006**
- (7) Minutes of Joint Council/San José Financing Authority of May 16, 2006**
- (8) Regular minutes of May 23, 2006**

Documents Filed: (1) Regular Minutes dated May 2, 2006, May 9, 2006, May 16, 2006, May 23, 2006, June 6, 2006, June 13, 2006, December 5, 2006 and December 12, 2006. (2) Joint Council/San José Financing Authority Minutes dated May 16, 2006. (3) San José Parking Authority Minutes dated June 6, 2007.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the minutes were approved. (9-0.)

- 2.2 (a) **ORD. NO. 27965 – Rezoning certain real property situated at the southeast corner of Capitol Avenue and Hostetter Road to R-M Multiple Residence Zoning District. C06-074**

Documents Filed: Proof of publication of the title of Ordinance No. 27965 executed on January 30, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27965](#) was adopted. (9-0.)

- (b) **ORD. NO. 27966 –Rezoning certain real property situated at the northeast corner of Monterey Road and Phelan Avenue to A(PD) Planned Development Zoning District. PDC06-110**

Documents Filed: Proof of publication of the title of Ordinance No. 27965 executed on January 30, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27966](#) was adopted. (9-0.)

- (c) **ORD. NO. 27967 –Rezoning certain real property situated at the north side of Blackford Avenue approximately 200 feet east of Rebecca Way (3801 Blackford Avenue) to A(PD) Planned Development Zoning District. PDC06-066**

Documents Filed: Proof of publication of the title of Ordinance No. 27965 executed on January 30, 2007, submitted by the City Clerk.

Action: [Ordinance No. 27967](#) was adopted. (9-0.)

- 2.3 **Adoption of a resolution amending Resolution No. 59988 to establish fees for commercial activities at the Norman Y. Mineta San José International Airport. CEQA: Resolution Nos. 67380 and 71451, PP06-209. (Airport)**

Action: Dropped per Administration.

- 2.4 **Acceptance of the Office of the City Auditor's *Sales Tax Audit Results for the Quarter Ended June 30, 2006*. (City Auditor)
(Rules Committee referral 1/24/07)**

Documents Filed: The Sales Tax Audit Results for the Quarter Ended June 30, 2006 from the Office of the City Auditor.

Action: The report on the Sales Tax Audit Results for the Quarter Ended June 30, 2006, was accepted. (9-0.)

- 2.6 Adoption of a resolution authorizing the City Manager to execute a Loan Sale Agreement with CarVal Investors (formerly Cargill Value Investments) for the sale of \$285,260 in existing Development Enhancement Special Fund loan portfolio to assist in the capitalization of the Economic Development Catalyst Program with an estimated net proceeds of \$208,092. CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Director of the Office of Economic Development Paul Krutko, dated January 17, 2007, recommending adoption of a resolution.

Council Member Liccardo pulled this item to urge caution when investing in start-ups.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, [Resolution No. 73632](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with CarVal Investors for the Sale of the DESF Loan Portfolio for an Amount of \$208,092”, was adopted, with Staff requested to proceed with caution. (9-0.)

- 2.7 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with HF&H Consultants, LLC to provide solid waste consulting services to the Environmental Services Department for a term from the date of execution through December 31, 2009 in an amount not to exceed \$250,000. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated January 1, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73633](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with HF&H Consultants for Solid Waste Consulting Services in a Total Amount Not to Exceed \$250,000”, was adopted. (9-0.)

- 2.8 Approval of travel by Council Member Nguyen to Boston, MA on March 2-3, 2007 to attend the 13th Annual National Asian Pacific American Conference on Law and Public Policy at Harvard University as a panelist speaker. Source of Funds: Asian Pacific American Law Students Association at Harvard Law School. (Nguyen)**

Documents Filed: Memorandum from Council Member Nguyen, dated January 22, 2007, recommending approval of travel request.

Action: The travel request was approved. (9-0.)

- 2.9 Approval to increase the contingency for the Bailey Avenue Extension Segment C Project in the amount of \$45,000, from \$238,000 to \$283,000 for a four-lane grade separation over Union Pacific Railroad tracks and Monterey Road. CEQA: Resolution No. 68705. Council District 2. (Public Works)**

2.9 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 17, 2007, recommending approval of the contingency for the Bailey Avenue Extension Segment C Project.

Action: The related contingency for the Bailey Avenue Extension Segment C Project, was approved. (9-0.)

- 2.10 (a) **Increase the contingency budget for the SNI WA 03: Alma Storm Drain Improvement Project by \$40,000 from \$120,000 to \$160,000.**
(b) **Approval of Contract Change Order No. 6 with Stoloski and Gonzalez, Inc., for the SNI WA 03: Alma Storm Drain Improvement Project in the amount of \$46,788.97 for a total contract amount of \$1,278,494.51 and an extension of fifteen (15) working days for a total of 105 working days.**
CEQA: Exempt, File No. PP05-129. Council Districts 3 and 7. SNI: Washington. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 17, 2007, recommending an increase in the contingency budget and approval of Contract Change Order No. 6 with Stoloski and Gonzalez, Inc.

Action: The Contract Change Order No. 6 with Stoloski and Gonzalez, Inc., and related contingency, were approved. (9-0.)

- 2.11 **Direction to the Department of Transportation to improve the Eden Avenue and Williams Road intersection with signage, median islands and marking improvements in-lieu of installing a new traffic signal identified in the Adopted FY 2006-07 Traffic Capital Improvement Budget. CEQA: Exempt, File No. PP06-171. Council District 1. SNI: Winchester. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James R. Helmer, dated January 17, 2007, recommending direction to the Department of Transportation to improve the Eden Avenue and Williams Road intersection.

Action: The direction to Department of Transportation to improve the Eden Avenue and Williams Road intersection with signage, median islands and marking improvements in-lieu of installing a new traffic signal identified in the Adopted FY 2006-07 Traffic Capital Improvement Budget, was approved. (9-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the Study Session

Mayor Reed, Chair

(a) Current Minutes

(b) Past Minutes

- (1) Council Study Session on the Mayor's Fiscal Year 2006-2007 June Budget Message minutes of June 12, 2006**
- (2) Study Session on the Coyote Valley Specific Plan Draft Affordable Housing Strategy minutes of June 23, 2006**
- (3) Council Study Session on Telecommunications Policy Priorities and AT&T's Project Lightspeed minutes of May 11, 2006**
[Deferred from 1/23/07 – Item 3.1(a) and 1/30/07 – Item 3.1(a)]
- (4) 2006-2007 Proposed Operating Budget Study Sessions minutes of May 8, 2006 – May 19, 2006**
[Deferred from 1/23/07 – Item 3.1(b) and 1/30/07 – Item 3.1(b)]

Documents Filed: (1) The Council Study Session on FY 2006-2007 Operating and Capital Budgets, dated June 12, 2006. (2) The Council Study Session on the Coyote Valley Specific Plan Draft Affordable Housing Strategy, dated June 23, 2006. (3) The Council Study Session on Telecommunications Policy Priorities and AT&T Project LightSpeed, dated May 11, 2006. (4) The Council Study Session on FY 2006-2007 Proposed Operating Budget, dated May 8, 2006-May 19, 2006.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Study Session Minutes were approved. (9-0.)

3.2 Report of the Rules and Open Government Committee – January 24, 2007

Mayor Reed, Chair

(a) City Council

- (1) Review February 6, 2007 Draft City Council Agenda**
 - (a) Add New Items to Draft Agenda**
 - (b) Review number of commendations**
 - (c) Assign Time Certain for Agenda Items (if needed)**
 - (2) Review New Add Items to January 30, 2007 Agenda**
 - (a) Review number of commendations**
 - (b) Review Exceptions to the 10-day rule**
 - (c) Assign Time Certain for Agenda Items (if needed)**
 - (3) List of Reports Outstanding**
- (b) Redevelopment Agency items reported out at Redevelopment Agency meeting**
- (c) Legislative Update**
- (1) State**
 - (a) 2007 Legislative Guidelines Priorities. (City Manager's Office)**
Heard by the Council on 1/30/07, Item 3.6.
 - (2) Federal**

3.2 Report of the Rules and Open Government Committee – January 24, 2007 Mayor Reed, Chair (Cont'd.)

- (d) Meeting Schedules
 - (1) Approve a Study Session on the Evergreen *East Hills Strategy on February 1, 2007. (Planning, Building and Code Enforcement)
Deferred from 1/17/07.
 - (2) Discussion of setting the following study sessions:
 - (a) February 5, General Plan: Major Strategies, 2:00 p.m. - 5:00 p.m.
 - (b) February 20, City Council Priority Setting Session, 9:00-4:00 p.m.
 - (c) February 22, Unfunded Programs/New Initiatives, 9:00 a.m.-Noon
 - (d) March 15, Mayor's March Budget Message Study Session, 9:00 a.m. - Noon
 - (e) March 19, Convention Center Expansion, 1:00 p.m. - 4:00 p.m.
 - (f) March 22 General Plan: Downtown Revitalization/First Act/ BART, 8:30 a.m. – 2:30 p.m.
 - (g) March 29, General Plan: Economic Development And Employment Lands, 9:00 a.m. - Noon
 - (h) April 5, Airport Obstruction Study, 9:00 a.m. - Noon
 - (i) April 20, Joint City and County Water District Board meeting, 9:00 a.m. - Noon
 - (j) May 3, General Plan: Formal Initiation of the General Plan Update, 9:00 a.m. - Noon
 - (k) May 7-18, Budget Study Sessions, TBD
- (e) The Public Record
- (f) Appointments to Boards, Commissions and Committees
- (g) Rules Committee Reviews, Recommendations and Approvals
 - (1) Discussion on Council Expenditure and Reimbursement Policy.
 - (2) Mayor's Transition Report. (Mayor)
 - (3) Mayor's Transition Government Reforms & Ethics Subcommittee Report Recommendations. (Mayor)
 - (4) Approve travel by Councilmember Williams to attend Conference of Mayors.
 - (5) Acceptance of the 6-month City Council Horizon Report: January 2007 – June 2007. (City Manager's Office)
- (h) Public Records Act Requests
 - (1) Review of Significant Public Records Act Requests
 - (a) San José Police Department's Response to Public Record Requests made by Californians Aware. (Mayor)
 - (2) Receive Public Concerns
- (i) Review of Council Policy Updates per Sunshine Reforms
- (j) Open Forum
- (k) Adjournment

Action: Deferred to February 13, 2007 as recommended by City Clerk.

3.2 Report of the Rules and Open Government Committee – January 17, 2007 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated January 17, 2007.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review January 30, 2007 Draft City Council Agenda
 - (a) Add New Items to Draft Agenda
 - (b) Set Time/s Certain for Key Agenda Items, as necessary

The Committee approved the January 30, 2007 Draft City Council Agenda with six additions.

- (2) Add New Items to January 23, 2007 Agenda

The Committee approved the January 23, 2007 City Council Agenda with one addition.

- (3) List of Reports Outstanding

The Committee noted and filed the City Manager's Report.

- (c) Legislative Update
 - (1) State. Attachment: Memorandum from Director of Aviation William F. Sherry, dated January 10, 2007, recommending the City sponsor legislation to repeal the 1999 legislation and including the City in the current state law that authorizes California airports to collect customer facility charges (CFCs), and authorize a one-week turnaround for City Council review.
 - (a) Approval of City-Sponsored Legislation-Customer Facility Charges (Rental Car)

The Committee approved the recommendation to be forwarded to the City Council for approval. Heard by Council on 1/23/07.

- (2) Federal - There were none.

- (d) Meeting Schedules
 - (1) Approve three Council Orientation Sessions. Attachment: Memorandum from Assistant to the City Manager Nadine Nader, dated January 9, 2007, recommending approval dates for Council Orientation Sessions:
 - (a) January 16, 2007, 1:00 p.m. – 3:00 p.m.
 - (b) January 19, 2007, 9:00 a.m. – 12:00 p.m.
 - (c) January 26, 2007, 9:00 a.m. – 4:00 p.m.

The Committee approved the Council Orientation Sessions.

3.2 Report of the Rules and Open Government Committee – January 17, 2007 (Cont'd.) Mayor Reed, Chair

(d) Meeting Schedules (Cont'd.)

- (2) Approve a Study Session on the Evergreen *East Hills Vision Strategy on February 1, 2007. Attachment: Memorandum from Director of Building and Code Enforcement Joseph Horwedel, dated January 12, 2007, transmitting Planning Staff recommendations. (Planning, Building and Code Enforcement)

Deferred to January 24, 2007.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated January 11, 2007, transmitting items for Public Record and Administration for the period of January 5-11, 2007.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees - There were none.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Oral Presentation and Discussion of the Council Agenda Preparation and Distribution Process. (City Clerk)

City Clerk Lee Price provided a presentation on the Council Agenda preparation and distribution process to the Committee. Mayor Reed proposed that the Rules and Open Government Committee process would be formalized in writing.

- (2) Review of Council Policy No. 9-5. Attachment: Memorandum from City Clerk Lee Price, dated January 11, 2007, transmitting the record of requested and approved travel requests under the Mayor and Council Travel Fund.

City Attorney Richard Doyle noted that the current policy should be refined to reflect the Mayor and Council Travel Budget and to clarify out of state travel of the Mayor. Staff will return to the Rules and Open Government Committee in February 2007 with a revised policy.

- (3) Approve travel by Council Member Campos to attend the League of CA Cities, Transportation, Communication and Public Works Policy Committee on January 12, 2007. Attachment: Memorandum from Council Member Campos, dated January 8, 2007, requesting approval of travel.
- (4) Approve travel by Council Member Campos to attend the League of CA Cities – Board of Directors Meeting on February 9-10, 2007. Attachment: Memorandum from Council Member Campos, dated January 8, 2007, requesting approval of travel.

The Committee approved the travel requests.

**3.2 Report of the Rules and Open Government Committee – January 17, 2007
Mayor Reed, Chair (Cont'd.)**

- (g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)
 - (5) Approve travel by Council Member Campos to attend the National League of Cities Congressional City Conference on March 10-14, 2007. Attachment: Memorandum from Council Member Campos, dated January 11, 2007, requesting approval of travel.
 - (6) Approve travel by Council Member Campos to attend League of CA Cities Infrastructure Task Force on January 25, 2007. Attachment: Memorandum from Council Member Campos, dated January 16, 2007, requesting approval of travel.

The Committee approved the travel requests.

- (h) Review of Significant Public Records Act Requests - There were none.
- (i) Review of Council Policy Updates per Sunshine Reforms - There were none.
- (j) Open Forum - None were presented.
- (k) Adjournment - The meeting was adjourned at 3:15 p.m.
(Deferred from 1/30/07 – Item 3.2)

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Rules and Open Government Committee Report and the actions of January 17, 2007, were accepted. (9-0.)

- 3.4**
- (a) **Acceptance of the administration's report on the implementation of approved Procurement Reforms as modified by this supplemental memorandum.**
 - (b) **Adoption of a resolution approving Council Policy titled "Procurement and Contract Process Integrity and Conflicts of Interest".**
 - (c) **Deferral of approval of an ordinance of the City of San José amending Chapters 4.04 and 4.12, and repealing Chapters 4.06 and 4.13 of Title 4 of the San José Municipal Code to increase administrative contract authority for purchase of supplies, materials, equipment, and services to \$1,000,000, to enact a protest procedure for purchases, and to amend, reorganize and consolidate various purchasing procedures with the amendment to previous Council direction to the City Attorney and City Manager to set the contract approval authority for services at \$250,000 and to amend San José Municipal Code Section 4.12.210 to change the reporting requirement for purchases from \$20,000 and above to \$100,000 and above.**

CEQA: Not a Project. (Finance/City Attorney's Office)

(Deferred from 11/21/06 – Item 3.4, 12/5/06 – Item 3.7 and 1/30/07 – Item 3.5)

3.4 (Cont'd.)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 6, 2006, recommending approval of an ordinance. (2) Supplemental memorandum from City Attorney Richard Doyle, dated February 1, 2007, providing a summary of the Council Policy on Procurement and Contract Process Integrity and Conflict of Interest. (3) Supplemental memorandum from Director of Finance Scott P. Johnson, dated January 25, 2007, recommending acceptance of the administration's report, adoption of a resolution and deferral of approval of the ordinance.

Director of Finance Scott Johnson and Deputy Director of Finance Walter Rossmann provided background on the Council Policy on Procurement and the Contract Process Integrity and Conflict of Interest and responded to Council questions.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, report on the implementation of approved Procurement Reforms as modified was approved, and [Resolution No. 73634](#), entitled: "A Resolution of the Council of the City of San José Approving a Council Policy on Procurement and Contract Process Integrity and Conflicts of Interest", was adopted, with Staff directed to include clear direction to the Council in the Council Policy when it is and when it is not acceptable to talk with a bidder/proposer; the approval of the ordinance was deferred. (9-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 (a) Report on interim use of Airport West Property and Council action on the following:

- (1) Approval of the work plan for securing interim uses for the 23.23 acre parcel of the Airport West (formerly FMC) property located at 1125 Coleman Avenue as described in this memo.
- (2) Approval of the release of a Request for Proposals (RFP) for consultant services to assist City staff in developing an RFP for interim uses of 23.23 acres of the Airport West property, analyzing the responses to the RFP, and negotiating an agreement with the successful respondent.
- (3) Approval of the release of an RFP seeking proposals from developers for interim and long-term uses of 23.23 acres of the Airport West property.

(b) Adoption of the following appropriation ordinance amendments in the General Fund:

- (1) Establish a City-wide Airport West Property Development appropriation in the General Fund to the Office of Economic Development in the amount of \$116,000.
- (2) Decrease the Reserve: Future Economic Development by \$116,000.

CEQA: Resolution No. 71716. Council District 3. (Economic Development/City Manager's Office)

4.2 (Cont'd.)

Documents Filed: (1) Director of Economic Development Paul Krutko and Acting Budget Director Jennifer Maguire, dated January 17, 2007, recommending adoption of a resolution and appropriation ordinance amendments. (2) Supplemental memorandum from Director of Economic Development Paul Krutko, dated February 1, 2007, recommending a minor addition to the proposed RFP, requesting the language be amended to read, “interim and long term uses”.

Director of the Office of Economic Development Paul Krutko outlined the Work Plan for Interim Uses of the Airport West Property and responded to Council questions.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 27972](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the General Fund for the Airport West Property Development Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” was adopted. (9-0.)

4.3 **Conduct a public hearing and adoption of a resolution authorizing the Director of Housing to negotiate and execute a Disposition and Development Agreement between the City of San José and Silicon Valley Habitat for Humanity, or an affiliated entity, for the development of a single-family home located on a City-owned property located on the east side of Delmas Avenue, between Jerome Street and Fuller Avenue. CEQA: Exempt, File No. PP06-144. Council District 3. SNI: Greater Gardner. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated January 17, 2007, recommending conducting a public hearing and adoption of a resolution.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, [Resolution No. 73635](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute a Disposition and Development Agreement (DDA) between the City of San José and Silicon Valley Habitat for Humanity, or an Affiliated Entity, for the Development of a Single Family Residence Located on City Owned Property on the East Side of Delmas Avenue Between Jerome Street and Fuller Avenue”, was adopted. (8-0-1. Absent: Chirco.)

4.4 Approval of the following actions to continue funding for the completion of the Evergreen*East Hills Vision Strategy, Evergreen Area Development Policy update, and related documents:

- (a) Approval of a continuation to the funding agreement with Yerba Buena Opco, Inc. to extend the funding agreement from January 1, 2007 through June 30, 2007 for the work associated with completing the Evergreen*East Hills Vision Strategy which encompasses an update to the Evergreen Area Development Policy and related documents; and**
- (b) Adoption of a resolution delegating approval of minor amendments to the funding agreement to the Director of Planning, Building and Code Enforcement to account for increases in funding received from Yerba Buena Opco, Inc. and minor schedule or task changes that remain consistent with the information contained in and the goals identified in the memorandum.**

**CEQA: Exempt, PP03-10-349. Council Districts 5, 7, and 8. SNI: West Evergreen, K.O.N.A and East Valley/680. (Planning, Building and Code Enforcement).
(Deferred from 1/30/07 – Item 4.2)**

Action: Deferred to February 27, 2007, per Administration.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board portion of the meeting convened to consider Item 9.1 in a Joint Session.

- 9.1**
- (a) Adoption of a resolution by the City Council amending the City's Conflict of Interest Code as it relates to the List of Designated City Filers.**
 - (b) Adoption of a resolution by the Redevelopment Agency Board amending the Agency's Conflict of Interest Code as it relates to the List of Designated Agency Filers.**

**(City Clerk/City Attorney's Office/Redevelopment Agency)
(Rules Committee referral 01/17/07)**

Documents Filed: (1) Memorandum from City Clerk Lee Price and City Attorney Richard Doyle, dated January 25, 2007, recommending adoption of a resolution. (2) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated January 25, 2007, recommending adoption of a Redevelopment resolution.

Brief Council discussion followed.

Public Comment: William Garbett spoke in support of the City's Conflict of Interest Code as it relates to the List of Designated City Filers and objected to the City Council hearing the redevelopment issue at a time when the Redevelopment Agency portion of the meeting was cancelled.

9.1 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Cortese and carried unanimously, [Resolution No. 73636](#), entitled: “A Resolution of the Council of the City of San José Amending the Conflict of Interest Code for the City of San José”, and [Redevelopment Agency Resolution No. 5733](#), entitled: “Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Amending the Agency’s Conflict of Interest Code as it Relates to the List of Designated Agency Filers”, were adopted. (9-0.)

OPEN FORUM

- (1) Katy McDowell asked the Council to consider exceptions to the Granny Unit Pilot Program.
- (2) Michael Bertram stated objections to the State’s proposal to use the Agnews site for a State prison.
- (3) Robert Apgar voiced personal observations.
- (4) William Garbett remarked that the public does not have access to documents relating to a project on Roberts Road.
- (5) Mark Trout presented religious points of view.

STRATEGIC SUPPORT SERVICES

3.6 Discussion and direction regarding illegal tree removal in San José and protecting San José’s urban forest. (Cortese) (Rules Committee referral 01/17/07)

Documents Filed: Memorandum from Vice Mayor Cortese, dated January 24, 2007, recommending Council discussion on the tree preservations in San José with the following to be expanded to include: (1) Possible requirement of on site display of permit by contractor performing tree removal. (2) Possible requirement of enhanced tree protections during construction. (3) Possible cancellation of permits of contractors violating tree ordinances. (4) Possible cancellation of licenses of contractors violating tree ordinances. (5) Possible incentive provided through the development review process for designs that account for tree preservation. (6) Examination of administrative oversight and enforcement of tree policy in San José. (7) Discussion of an Urban Forestry Task Force (along with associated fiscal and administrative impacts) to review and make recommendations on tree policies. (8) Direction to Staff to research and report back to the Rules and Open Government Committee on the possibility (along with associated fiscal and administrative impacts) of a City of San José Urban Forestry commission to oversee tree policy in San José.

Motion: Vice Mayor Cortese moved approval of his memorandum for discussion of items pertaining to tree preservation, dated January 17, 2007. Council Member Campos seconded the motion.

3.6 (Cont'd.)

Discussion followed with direction as noted in "Action".

Public Comment: Speaking in support of tree preservation were: Nancy Garrison, Curt Gowan, Steve Tedesco, Rita Norton, Ross Signorino, Andrew Meridaros, Larry Ames, David Albreict, Joan Bohnett and Kerri Hamilton.

Council Member Liccardo requested to amend the motion to consider one single entity for enforcement in lieu of different agencies. Vice Mayor Cortese and Council Member Campos accepted the amendment.

Action: On a call for the question, the motion carried unanimously, and the memorandum from Vice Mayor Cortese, dated January 17, 2007, Items (1)-(3), (5) and (6) were referred to the Transportation and Environment Committee; and Item (4) was referred to the February 22, 2007 New and Unfunded Initiatives Budget Study Session. The memorandum from Vice Mayor Cortese and Council Member Campos, dated January 24, 2007, Items (2)-(4) were referred to Staff; Items (5)-(8) were referred to the Transportation and Environment Committee and Item (1) was dropped. Staff was further requested to: (1) Include Our City Forest in the process. (2) Consider one single agency to be responsible for enforcement. (8-0-1. Absent: Constant.)

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:18 p.m.

RECESS/RECONVENE

The City Council recessed at 4:18 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chambers, City Hall.

Present: Council Members - Chirco, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Campos. (Excused)

Vacant: - Council Districts 4 and 6.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-1. Absent: Campos.)

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation from Breathe California to the City Council for investing in tobacco control issues and being one of the top 10 healthiest cities in America. (Cortese/Mayor)**
(Rules Committee referral 01/17/07)
(Deferred from 1/30/07 – Item 1.5)

Action: Mayor Reed and Vice Mayor Cortese recognized and commended the City of San José as one of the top 10 “Healthiest Cities in America”. Breathe America’s CEO and President Margo Leathers Sidener presented an award to Mayor Reed.

- 1.5 Presentation of a commendation to retired Franklin McKinley School Board Member Susan Sandy for her 8 years of dedicated service and leadership on the Franklin McKinley Board of Education. (Nguyen)**
(Rules Committee referral 1/24/07)

Action: Mayor Reed and Council Member Nguyen recognized and commended Ms. Susan Sandy for her eight years of dedicated service on the Franklin McKinley Board of Education.

STRATEGIC SUPPORT SERVICES

- 3.5**
- (a) Acceptance of staff's report on the Reed Reforms and direction to staff to proceed as outlined in the attached matrix.**
 - (b) Provide clarification to staff on Reed Reforms:**
 - (1) Reed Reform #1, Ask the voters to revise the Charter to make it easier to recall the Mayor and Council Members for a violation of the Charter or the Oath of Office.**
 - (2) Reed Reform # 5, Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.**
 - (3) Reed Reform #8, Disclose all offers made to City unions for pay or benefit increases when the offers are made.**
 - (4) Reed Reform #26, Hold regular public hearings on ethical issues around the state so we can learn from our mistakes and the mistakes of others.**
 - (c) Provide direction regarding exceptions outlined in this report, for Reed Reform #5, Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.**
- CEQA: Not a Project. (City Manager's Office/City Attorney's Office)**
(Rules Committee referral 01/17/07)

Documents Filed: Supplemental memorandum from Deputy City Manager Deanna J. Santana, providing a summary of the discussion held at the Rules and Open Government Committee on January 31, 2007 regarding the Reed Reforms.

Mayor Reed provided a background summary on the recommendations and status of the Reed Reforms.

Council comments and questions followed.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo and carried unanimously, the recommendations for the Reed Reforms outlined in the Staff Report and Supplemental Report, were approved. (8-0-1. Absent: Campos)

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the terminus of Duckett Way, approximately 420 feet east of S. De Anza Boulevard from R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 19 new single family attached residential units and one single family residence on an 1.83 gross acre site (1566 Duckett Way) (P. Lenahan and M. Barshow, Owners; Barry Swenson Builders, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning, Building and Code Enforcement and Planning Commission recommends to not adopt the rezoning ordinance (4-1-2). PDC06-062 - District 1**
(Continued from 12/5/06 – Item 11.4, 12/12/06 – Item 11.7 and 1/23/07 – Item 11.4)

11.2 (Cont'd.)

Senior Planner of Planning, Building and Code Enforcement Lee Butler presented the background of the rezoning of the property on Duckett Way and responded to Council questions.

Public Comment: Mayor Reed opened the public hearing. Erik Schoennauer, representing Barry Swenson Builders, the Applicant, provided a brief presentation in support of the rezoning project.

Brian Schmidt (Committee for Green Foothills) spoke in support of the Planning Commission to oppose the rezoning. Erik Schoennauer added that the project conforms to the City and the California Environmental Quality Act (CEQA). Mayor Reed closed the public hearing.

Motion: Council Member Constant recommended approval of the rezoning of the property on Duckett Way. Council Member Nguyen seconded the motion.

Extensive discussion followed.

Mayor Reed and Vice Mayor Cortese objected to the rezoning as planned. Council Member Williams asked whether the maker of the motion would consider other options. Council Member Constant stated the Applicant would be agreeable to make a zero sum gain in reference to Mayor Reed's comment.

Council Member Chirco suggested that Council defer this item until there is more clarity on what the Applicant would be willing to support.

Action: Council Members Constant and Nguyen withdrew the motion. Upon motion by Council Member Chirco, seconded by Council Member Williams and carried unanimously, Item 11.2, the rezoning of the property on Duckett Way was continued to February 27, 2007. (8-0-1. Absent: Campos)

CONSENT CALENDAR

- 2.5 As recommended by the Elections Commission, adoption of a resolution amending the Schedule of Fees and Charges to increase the fee for delinquent lobbyist reports from \$10.00/day to \$25.00/day. (City Clerk/City Attorney's Office)
(Rules Committee referral 01/17/07)
(Deferred from 1/30/07 – Item 2.6)**

Documents Filed: Memorandum from City Attorney Richard Doyle and City Clerk Lee Price, dated January 25, 2007, adoption of a resolution as recommended by the Elections commission.

2.5 (Cont'd.)

Motion: Vice Mayor Cortese moved approval of adoption of a resolution amending the Schedule of Fees and Charges, as recommended by the Elections Commission. Council Member Williams seconded the motion.

Mayor Reed requested an amendment to increase the late filing fee from \$25.00 to \$50.00. Vice Mayor Cortese and Council Member Williams accepted the amendment.

City Attorney Richard Doyle advised Council that a separate ordinance would be brought to the Council to address the interest on the new penalty amounts.

Action: On a call for the question, the motion carried unanimously, and [Resolution No. 73637](#), entitled: "A Resolution of the Council of the City of San José Amending the Schedule of Fees and Charges to Increase the Lobbyist Delinquent Report Fee", was adopted, as amended, with the delinquent fee set at \$50.00/day. (7-0-2. Absent: Campos, Liccardo.)

PUBLIC HEARINGS

11.3 **Administrative Hearing on consideration of an appeal of the Planning Commission's decision to deny a Determination of Public Convenience or Necessity to allow off-sale beverages at a supermarket on a 2.3 gross acre site in the CP Pedestrian Commercial Zoning District, located on the north side of McKee Road, approximately 320 feet westerly of White Road (3065 McKee Road) (Rohnert Marie C Trustee & Et Al, Ell McKee LLC, Owner). CEQA: Exempt. ABC06-002 – District 5**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 18, 2007, recommending that Council override the Planning Commission's decision to deny a Determination of Public Convenience or Necessity to allow the off sale of alcoholic beverages at a supermarket. (2) Proof of Publication of Notice of Public Hearing, executed on January 26, 2007, and January 28, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel summarized the background of the Appeal to allow the off sale of alcoholic beverages at a supermarket.

Council Member Chirco read comments on behalf of Council Member Campos in support of the Staff recommendation.

11.3 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously [Resolution No. 73638](#), entitled: "A Resolution of the Council of the City of San José Approving a Request for a Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of Off Sale of Alcohol at an Existing Grocery Store Located on the North Side of McKee Road, Approximately 320 Feet Westerly of White Road", was adopted, overriding the Planning Commission decision to deny and approving the Determination of Public Convenience. (7-0-2. Absent: Campos, Liccardo.)

OPEN FORUM

Documents Filed: Two letters from the public protesting against two current land use proposals in North San José.

- (1) Robert Apgar voiced personal observations.
- (2) River Oaks Residents speaking against two current land use proposals in North San José (Caddence and Sony) were: Erick Kaeding, Leigh Cagar, Greg Wardle and Chern Leu.

ADJOURNMENT

The Council of the City of San José adjourned at 8:57 p.m. in memory of Wester Sweet, a prominent Civil Rights Attorney who spent his life fighting for justice and equal rights.

Minutes Recorded, Prepared and Respectfully Submitted By,

Lee Price, MMC
City Clerk

smd/2-9-07MIN.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>